

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA

VS.

DAVID DIEHL

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No. A-10-CR-297 LY

MOTION TO ALLOW DEFENDANT TO VIEW EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW David Diehl (“Diehl”) and moves this Court to allow him to view the evidence in this case, specifically any and all videos, and would show the Court the following:

I.

Diehl has been in custody since the time of his arrest on April 7, 2010.

II.

Under 18 USC §3509(m), while the defendant has no right to request the reproduction of any material that constitutes child pornography, the Government must make the property or material reasonably available to the defendant. Property or material are deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant.

III.

The Government must provide him an opportunity to inspect, view, and examine the material in this case that is alleged to constitute child pornography. As the defendant is currently incarcerated, arrangements must be made to allow the defendant to view the videos in this case while still in custody

IV.

Defendant's counsel has conferred with counsel for the Government, and the Government has declined to make the video available to the defendant without a court order.

V.

The defendant is entitled to view the alleged evidence against him in this case, under 18 USC § 3509(m). The Government must make the material reasonably available to him, and as the defendant is currently incapable of going to a Government facility to view the evidence, the Government must therefore provide an opportunity to the defendant to view the evidence while in custody. Therefore, the defendant asks this court to order the Government to allow the defendant to view the materials in this case, and to make arrangements for said viewing.

Respectfully submitted,

/s/ Stephen M. Orr
STEPHEN M. ORR
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Austin, Texas 78701
(512) 472-8392
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Texas Bar No. 15317000

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2010, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court, using the CM/ECF System which will transmit notification of such filing to all counsel of record.

Matt Devlin
816 Congress Ave., Suite 1000
Austin, Texas 78701

/s/ Stephen M. Orr
STEPHEN M. ORR

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O R D E R

Came on this day to be considered the Defendant's Motion for Defendant to View Evidence. The Court, having carefully reviewed the file, and having heard argument from both parties, finds that the motion has merit and orders that it be GRANTED.

So ordered on this the ____ day of _____, 2010.

UNITED STATES DISTRICT / MAGISTRATE JUDGE